

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

No. CR 08-0730 WHA

Plaintiff,

v.

**ORDER RE REQUESTS TO
WITHDRAW AS COUNSEL**

JONATHAN CRUZ-RAMIREZ, *et al.*

Defendants.

Counsel for defendant Jonathan Cruz-Ramirez — Attorneys John Philipsborn and Susan Raffanti — and counsel for defendant Angel Noel Guevara — Attorney Lupe Martinez — move to withdraw as counsel for their respective clients (Dkt. Nos. 5405, 5419). As counsel have already filed notices of appeal on behalf of their clients, however, the undersigned no longer retains jurisdiction over the matter. *See* Circuit Rule 4-1(a) (“If counsel was appointed by the district court pursuant to 18 U.S.C. 3006A and a notice of appeal has been filed, counsel’s appointment automatically shall continue on appeal”); Circuit Rule 4-1(c) (“A motion to withdraw as counsel on appeal after the filing of the notice of appeal . . . shall be filed with the Clerk of [the court of appeals]”)

Nonetheless, it is the undersigned’s strong recommendation that Attorneys Philipsborn and Martinez remain appointed counsel on appeal. A record-breaking amount of CJA funds were spent on the instant case and the number of docket entries (currently 5,547) far exceeds any other case the undersigned has encountered and it is believed to be the largest docket in any case in this

1 Court's history. Given the length of the case and trial, gargantuan record, and complexity of
2 issues, an extreme burden would be put on replacement counsel and our court of appeals should
3 trial counsel be permitted to withdraw. Both Attorneys Philipsborn and Martinez are virtually
4 irreplaceable and should not be lost.

5 In contrast, it would not unduly burden the appellate process to excuse Attorney Raffanti
6 from her representation of defendant Cruz-Ramirez and allow her to move forward with her
7 desire to retire from the practice of law, as Attorney Philipsborn has a greater familiarity with the
8 trial record and the add-on services of Attorney Raffanti are not necessary for appeal.

9 The undersigned further recommends that *additional* appellate counsel be appointed to
10 work with Attorneys Philipsborn and Attorney Martinez. This would mitigate Attorney
11 Philipsborn's concerns regarding his 2012 workload, Attorney Martinez's desire to taper into
12 retirement, and both attorneys' claimed lack of comfort with appellate law practice. Although
13 this arrangement would result in two appellate attorneys for each defendant, it is the
14 undersigned's view that this arrangement would be more cost-effective than requiring brand new
15 appellate counsel to proceed alone. To this end, the Federal Defender's Office is requested to
16 identify appellate counsel that could serve as co-counsel on appeal.

17 Finally, as previously stated on numerous occasions, the undersigned is unaware of any
18 viable claims of ineffective assistance of counsel. Attorney Philipsborn performed admirably
19 both before, during, and after the trial. His vague suggestion that there *might* be an ineffective
20 assistance claim is inadequate to relieving Attorney Philipsborn at this juncture. Similarly,
21 although Attorney Martinez has not raised the possibility of ineffective assistance, it bears noting
22 that the undersigned is likewise unaware of any viable claim for ineffective assistance as to him.

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25 Dated: December 15, 2011.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE